

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ERICKSON PRODUCTIONS, INC., and JIM
ERICKSON,

Plaintiffs,

v.

ATHERTON TRUST; KRAIG R. KAST; and
ONLY WEBSITES, INC.

Defendants.

No. 12-CV-1693-PGG

Hon. Paul G. Gardephe

ECF CASE

DECLARATION OF DANIAL A. NELSON
IN SUPPORT OF AN ORDER FOR DEFAULT JUDGMENT AGAINST
DEFENDANTS ATHERTON TRUST AND ONLY WEBSITES, INC.

I, Danial A. Nelson, an attorney duly admitted to practice before this Court, do hereby declare under penalty of perjury as prescribed in 28 U.S.C. § 1746, as follows:

1. I am a partner at Nelson & McCulloch LLP and one of the attorneys for Plaintiffs in this action. I have personal knowledge of the facts contained in this declaration and am competent to testify to them.

2. I submit this declaration in support of Plaintiffs' request for an entry of Default Judgment against Defendants Atherton Trust and Only Websites, Inc.

3. I hereby certify that Defendants Atherton Trust and Only Websites are not real persons, and thus cannot be infants, in the military, or an incompetent person.

4. Defendant Atherton Trust was properly served on or about May 10, 2012. A true and correct copy of the affidavit of service of Mr. Kast, the founder and principle of Atherton Trust, is attached hereto as Exhibit 1.

5. The affidavit of service on Atherton Trust was filed on or about May 15, 2012. (Docket No. 2.) The answer or responsive pleading for Atherton Trust was due on June 5, 2012. (Docket No. 2.)

6. Defendant Only Websites was properly served on or about June 4, 2012. A true and correct copy of the affidavit of service of Only Websites is attached hereto as Exhibit 2.

7. The answer or responsive pleading for Only Websites was due on June 25, 2012. (Docket No. 7.)

8. The affidavit of service was filed on June 8, 2012. (Docket No. 6.) An amended affidavit of service on Only Websites was filed on September 24, 2012. (Docket No. 7.)

9. Defendants Atherton Trust and Only Websites both failed to plead or otherwise defend the action.

10. Pursuant to Local Civil Rule 55.2(b)(1), attached hereto as Exhibit 3 is a true and correct copy of the Certificate of Default against Defendants Atherton Trust and Only Websites, Inc. entered by the Clerk of this Court on September 24, 2012.

11. Pursuant to Local Civil Rule 55.2(b)(2), attached as Exhibit 4 is a copy of the Complaint in this action setting forth the claims against Defendant Atherton Trust against which default judgment should be entered.

12. Pursuant to Local Civil Rule 55.2(b)(2), attached as Exhibit 5 is a copy of the First Amended Complaint in this action setting forth the claims against Defendant Only Websites, Inc. against which default judgment should be entered.

13. Pursuant to Local Civil Rule 55.2(b)(3), attached hereto as Exhibit 6 is a proposed Order to Show Cause as to why default judgment should not be entered against Defendants Atherton Trust and Only Websites, Inc.

14. I hereby certify that, pursuant to Local Civil Rule 55.2(c), copies of the Clerk's Certificate of Default and these papers have been mailed to the parties against whom a default judgment is sought at the business address at which service was effected.

Dated: New York, New York
September 24, 2012

NELSON & McCULLOCH LLP

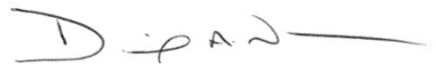
By: 
Daniel A. Nelson (DN4940)

EXHIBIT 1

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 12 CIV 1693

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) Kraig R. Kast
 was received by me on (date) 5/2/12.

☒ I personally served the summons on the individual at (place) 12155 Vista Terrazza Court
Valley Center, CA 92082 on (date) 5/10/12; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____,
 a person of suitable age and discretion who resides there,
 on (date) _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on (name of individual) _____, who is
 designated by law to accept service of process on behalf of (name of organization) _____
 on (date) _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other (specify): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date:

5/15/12Barbara J. Wiarda

Server's signature

Barbara J. Wiarda

Printed name and title

2121 Fifth Avenue, #203
SAN DIEGO, CA 92101

Server's address

Additional information regarding attempted service, etc:

EXHIBIT 2

Case 12-CV-1693-PGG Page 2 of 2

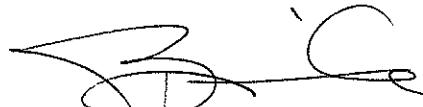
Proof of Service

I declare under penalty of perjury that on June 4, 2012 at 12:50 p.m., I served the Summons and Plaintiff's First Amended Complaint in this case on defendant Only Websites, Inc. under the Utah Rules of Civil Procedure ("URCP") Rule 4 (as provided for in Federal Civil Rules of Procedure Rule 4(e)(1))by:

1. Leaving a copy of each at 831 East 340 South, Suite 200, American Fork, Utah 84003, the Defendant's usual place of business by stating the name of the process and leaving a copy thereof (as provided in URCP Rule 4(d)(1)) with the person who identifies himself as Bill Munteer and states at the time of service that he is a person in charge (a general agent under URCP Rule 4(d)(1)(E)), and who then subsequently states that he will not accept service, and;
2. By mailing a copy of each via USPS First Class Mail to the defendants address at 831 East 340 South, Suite 200, American Fork, Utah 84003 .

My fees are \$ -0- for travel and \$ 54.00 , for services, for a total of \$ 54.00 .

Date: June 5, 2012



Server's Signature

John-Michael Zimmerle,
UT Lic. Private Investigator G102260

Printed Name and Title

ViewPointe Corporation
PO Box 505, Spanish Fork, UT 84660

Server's Address

EXHIBIT 3

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ERICKSON PRODUCTIONS, INC., and JIM
ERICKSON,

Plaintiffs,

v.

ATHERTON TRUST; KRAIG R. KAST; and ONLY
WEBSITES, INC.

Defendants.

12 Civ. 1693 (PGG)

CLERK'S CERTIFICATE

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 9/24/12
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I, RUBY J. KRAJICK, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action commenced on or about MARCH 7, 2012 with the filing of a summons and complaint. A copy of the summons and complaint was served on Defendant Atherton Trust on May 10, 2012 by personally serving Kraig R. Kast at 12155 Vista Terrazza Ct. in Valley Center, CA, and proof of such service thereof was filed on May 15, 2012. A copy of the summons and amended complaint was served on Defendant Only Websites on June 4, 2012 by personally serving Bill Munteer at 831 East 340 South, Suite 200 in American Fork, UT, and proof of such service thereof was filed on September 24, 2012.

I further certify that the docket entries indicate that the defendant has not filed an answer or otherwise moved with respect to the complaint herein. The default of the defendant is hereby noted.

SEP 24, 2012
Dated: New York, New York
RUBY J. KRAJICK
Clerk of Court

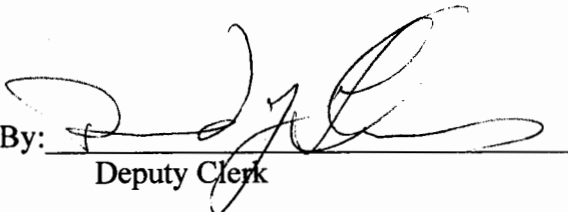
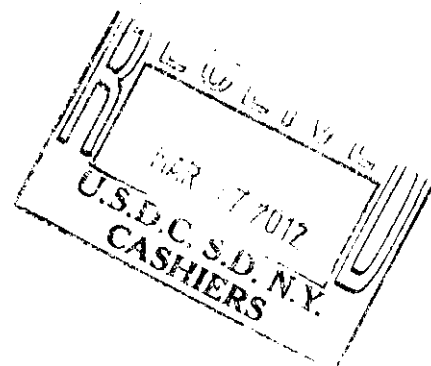
By: 
Deputy Clerk

EXHIBIT 4

JUDGE GARDEPHE

Danial A. Nelson (DN4940)
Kevin P. McCulloch (KM0530)
NELSON & McCULLOCH LLP
The Chrysler Building
405 Lexington Ave., 26th Floor
New York, New York 10174
T: (212) 907-6677
F: (646) 308-1178

Counsel for Plaintiff



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ERICKSON PRODUCTIONS, INC.,

Plaintiff,

v.

ATHERTON TRUST; *and* KRAIG R. KAST

Defendants.

Civil Action No.:

**COMPLAINT AND
DEMAND FOR A JURY TRIAL**

Plaintiff ERICKSON PRODUCTIONS, INC., by and through undersigned counsel, pursuant to the applicable Federal Rules of Civil Procedure and the Local Rules of this Court, demands a trial by jury of all claims and issues so triable, and for its Complaint against Defendants Atherton Trust and Kraig Kast and hereby asserts and alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff Erickson Productions, Inc. ("Plaintiff" or "Erickson Productions") is the sole distributor and licensor of photographic images taken by Jim Erickson.
2. Erickson Productions holds the copyrights to or is entitled to bring copyright actions concerning the images at issue in this action.

3. Erickson Productions, Inc.'s primary place of business is Petaluma, California.

4. Upon information and belief, Defendant Atherton Trust ("Atherton") is a real estate wealth management company.

5. Upon information and belief, Defendant Kraig R. Kast ("Kast") is the Chief Executive Officer and Managing Trustee of Atherton Trust.

6. Upon information and belief, Atherton is a Delaware registered corporation with its primary place of business in San Mateo, California with additional branch offices throughout the United States.

7. This is an action for copyright infringement and related claims brought by Plaintiff, the holder of copyrights to photographs described herein, against Defendants for unauthorized use of those copyrighted photographs.

8. Jurisdiction for Plaintiff's claims lies with the United States District Court for the Southern District of New York pursuant to the Copyright Act of 1976, 17 U.S.C. §§101, *et seq.*, 28 U.S.C. § 1331 (conferring original jurisdiction "of all civil actions arising under the Constitution, laws, or treaties of the United States"), and 28 U.S.C. § 1338(a) (conferring original jurisdiction over claims arising under any act of Congress relating to copyrights).

9. Venue is proper in this Court under 28 U.S.C. §§1391(b) since a substantial portion of the alleged misconduct by the Defendants giving rise to the claims asserted herein occurred in this District and 28 U.S.C. § 1400(a) since Defendants may be found in this District.

10. Upon information and belief, evidence adduced during discovery will show that Defendant has significant contacts, both general and specifically related to the events at issue in this action, with the forum jurisdiction, including sending communications and advertisements to potential clients in this jurisdiction; communicating with persons and/or entities in this

jurisdiction; soliciting business in this jurisdiction; operating a website that is fully interactive and thus can be and has been accessed by persons in this district; and infringing Plaintiff's copyrights in this jurisdiction.

GENERAL ALLEGATIONS

11. Plaintiff Erickson Productions is a distributor and licensor of stock photography images taken by Jim Erickson.

12. Mr. Erickson is a professional photographer who makes his living by taking and licensing photographs.

13. Defendant Atherton owns and operates a website with the following URL address: www.athertontrust.com.

14. Upon information and belief, Defendant Atherton has exploited Plaintiff's copyrighted photographs for commercial use on its website without permission.

15. Because Defendant Atherton has refused to cooperate or disclose information relating to its infringing use of Plaintiff's work, the full scope of Defendant's infringing activities in this regard has not yet been ascertained.

16. Upon information and belief, Defendant used at least three (3) of Plaintiff's copyrighted photographs on its website without permission.

17. Upon information and belief, Defendant Kraig Kast is the person primarily responsible for the content of Atherton's website and/or exercises control over such content and enjoys benefits and derives profits from the operation of the website.

18. The following is a true and correct copy of Plaintiff's photograph identified or referred to as "07004-278"



19. The following is a true and correct copy of a screen capture of the "Our Commitment" page (<http://www.athertontrust.com/commitment.php>) of Atherton's website (See Exhibit 1):

Atherton Trust: Your Private Trust Company

ATHERTON TRUST
YOUR PRIVATE TRUST COMPANY

Home | About Us | Resources | Contact Us

Atherton Trust
Your Needs
Your Trust
Your Success
Commitment
People
Management
Performance

Our Commitment to you

We take our responsibilities as Trustees very seriously. It is our goal not to lose your original principle whether it is invested in securities, real estate or collectibles. Using the tools available to us we make every effort to achieve that goal while seeking optimum returns within your risk tolerance.

We meld commitment, people and methodology together to form our approach to meeting your individual needs and achieving your goals.

1. Act in Your Best Interest [Show Details](#)
2. Follow a Fiduciary Duty Standard Of Care [Show Details](#)
3. Deliver Attentive, Personalized Service [Show Details](#)
4. Leverage our proven processes and consultative approach [Show Details](#)
5. Build Customized, Integrated Investment Plans [Show Details](#)
6. Achieve Goals And Experience Long-Term Success Through Strategic Advice [Show Details](#)
7. Offer A Team For Each Client [Show Details](#)
8. Manage Your Team Well [Show Details](#)
9. Focus On Professional Advice, Not On Products [Show Details](#)
10. Align Fee Structure with Your Best Interests [Show Details](#)
11. Practice Full Disclosure and Seek Transparent Costs [Show Details](#)
12. Utilize The Best People Irrespective Of The Source [Show Details](#)
13. Take Advantage of Research [Show Details](#)
14. Practice What We Preach [Show Details](#)
15. Produce Quantifiable Results [Show Details](#)

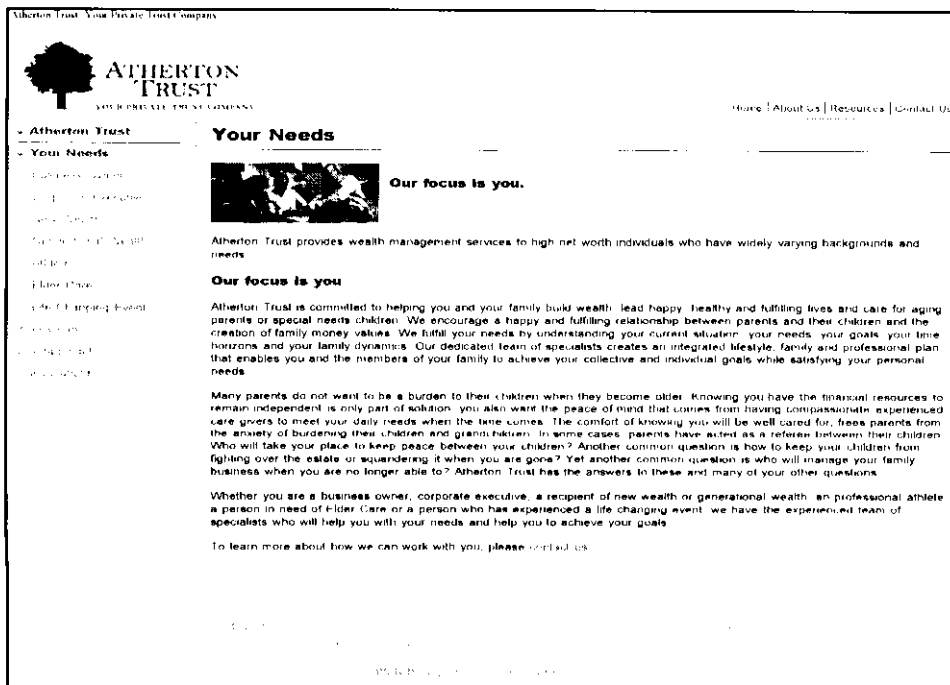
© 2011 Atherton Trust. All rights reserved. Atherton Trust is a registered trademark of Atherton Trust. All other trademarks are the property of their respective owners.

<http://www.athertontrust.com/commitment.php> [7/12/2011 4:22:41 PM]

20. The following is a true and correct copy of Plaintiff's photograph identified or referred to as "01018-03":



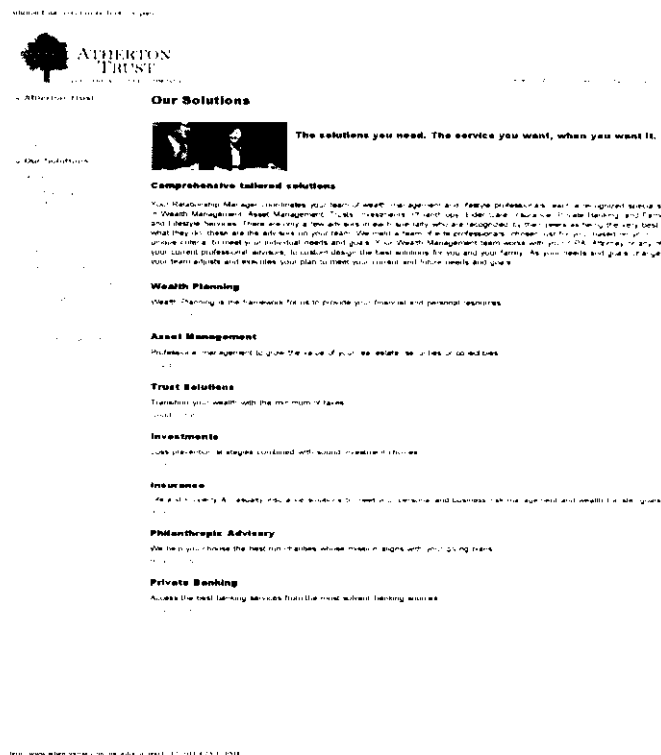
21. The following is a true and correct copy of a screen capture of the "Your Needs" page (<http://www.athertontrust.com/your-needs.php>) of Defendant Atherton's website (See Exhibit 2):



22. The following is a true and correct copy of Plaintiff's photograph identified or referred to as "07006-3520":



23. The following is a true and correct copy of a screen capture of the "Our Solutions" page (<http://www.athertontrust.com/our-solution.php>) of Defendant Atherton's website (*See Exhibit 3*):



24. Defendant Atherton used, published, distributed, and otherwise exploited Plaintiff's photographs on its website without obtaining prior permission from Plaintiff and without acquiring a license to do so.

25. Upon information and belief, Atherton copied these images (along with significant other content) from the webpage of Wells Fargo, one of Erickson's clients who obtained a legitimate license to use these images on its website.

26. Upon information and belief, the use of the Erickson image on the "Our Commitment" page of the Atherton website was copied from the "Our Approach" page of the Wells Fargo site. Compare Exhibit 1 (<http://www.athertontrust.com/commitment.php>) to Exhibit 4 (<https://www.wellsfargo.com/theprivatebank/ourapproach/>).

27. Upon information and belief, the use of the Erickson image on the "Your Needs" page of the Atherton website was copied from the "Your Profile" page of the Wells Fargo site. Compare Exhibit 2 (<http://www.athertontrust.com/your-needs.php>) to Exhibit 5 (<https://www.wellsfargo.com/theprivatebank/yourprofile/>).

28. Upon information and belief, the use of the Erickson image on the "Our Solutions" page of the Atherton website was copied from the "Our Solutions" page of the Wells Fargo site. Compare Exhibit 3 (<http://www.athertontrust.com/our-solution.php>) to Exhibit 6 (<https://www.wellsfargo.com/theprivatebank/oursolutions/>).

29. On July 12, 2011, Plaintiff requested that Defendant Atherton cease usage of the copyrighted images presented herein, and disclose information regarding its infringing use of Plaintiff's copyrighted works.

30. Defendant Kast responded by claiming that a third-party web developer had included the images on Atherton's website. When pressed for more information about the identity of the web developer, Defendant Kast refused to provide additional information.

31. Defendant Kast's response to the takedown demand evinces that he exercised control over the content of the Atherton website and was responsible for overseeing its content.

32. Plaintiff registered the photographs used by Defendant with the United States Copyright Office.

33. Image 01018-03 is registered under Copyright Registration VA 1-734-754.

34. Image 07004-278 is registered under Copyright Registration VA 1-745-747.

35. Image 07006-3520 is registered under Copyright Registration VA 1-632-501.

36. Upon information and belief, Plaintiff registered copyrights in these images prior to Defendant Atherton's infringement.

37. Because Defendants have refused to cooperate or disclose information relating to its infringing use of Plaintiff's work, the full scope of Defendants' infringing activities has not yet been ascertained.

COUNT I (COPYRIGHT INFRINGEMENT)

38. Plaintiff repeats and re-alleges each allegation set forth in paragraphs 1-37 as if set forth fully herein.

39. Plaintiff is the registered copyright owner of the creative works identified herein and that are the subject of this action.

40. Defendant Atherton used, published, displayed, distributed, and/or exploited Plaintiff's creative works without prior license or permission or authorization to do so.

41. Defendant Atherton did not secure permission, authorization, or a license to use

and display Plaintiff's creative works in the publications and materials identified herein prior to publication.

42. Upon information and belief, Defendant Kraig Kast is the person primarily responsible for the content of Atherton's website and/or exercises control over such content and enjoys benefits and derives profits from the operation of the website.

43. Defendants' use of Plaintiff's creative work did not accord any attribution or credit or ownership of this work to Plaintiff.

44. Defendant Atherton's failure and/or refusal to disclose information regarding its infringing conduct through Defendant Kast was willful, knowing and intentional.

45. By using, displaying, distributing, exploiting, publishing, and otherwise exploiting Plaintiff's copyrighted creative works in its commercial website, Defendants infringed Plaintiff's copyrights in the creative works identified herein.

46. By infringing Plaintiff's copyrights, Defendants misappropriated Plaintiff's intellectual property for its own profit, causing Plaintiff significant injuries, damages, and losses in amounts to be determined at trial.

47. Upon information and belief, Defendants' unauthorized use of Plaintiff's copyrighted images was willful.

48. Plaintiff seeks all damages recoverable under the Copyright Act, including statutory or actual damages, including Defendants' profits attributable to the infringing use of Plaintiff's creative works, and damages suffered as a result of the lack of compensation, credit, and attribution and from any diminution in the value of Plaintiff's copyrighted works. Plaintiff also seeks all attorneys' fees and any other costs incurred in pursuing and litigating this matter.

WHEREFORE, Plaintiff respectfully prays for judgment on his behalf and for the following relief:

1. A preliminary and permanent injunction against Defendants from copying, displaying, distributing, advertising, promoting, and/or selling the infringing publications identified herein, and requiring Defendants to deliver to the Court for destruction or other appropriate disposition all relevant materials, including digital files of Plaintiff's photographs and all copies of the infringing materials described in this complaint that are in the control or possession or custody of Defendants;

2. All allowable damages under the Copyright Act, including, but not limited to, statutory or actual damages, including damages incurred as a result of Plaintiff's loss of licensing revenue and Defendants' profits attributable to infringement, and damages suffered as a result of the lack of credit and attribution;

3. All allowable damages caused by and/or resulting from Defendants' violation and infringement of Plaintiff's moral rights in and to this creative visual work;

4. Plaintiff's full costs, including litigation expenses, expert witness fees, interest, and any other amounts authorized under law, and attorneys' fees incurred in pursuing and litigating this matter;

5. Any other relief authorized by law, including punitive and/or exemplary damages; and

6. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Dated March 7, 2012
New York, New York.

Respectfully submitted,

NELSON & McCULLOCH LLP

By:



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405 Lexington Ave., 26th Floor
New York, New York 10174
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dnelson@nelsonmcculloch.com
kmcculloch@nelsonmcculloch.com

Attorneys for Plaintiff

EXHIBIT 1



**ATHERTON
TRUST**

YOUR PRIVATE TRUST COMPANY

[Home](#) | [About Us](#) | [Resources](#) | [Contact Us](#)

✓ **Atherton Trust**

Your Needs

Your Goals

✓ Our Approach

➤ **Commitment**

People

Methodology

Our Solutions

Our Commitment to you

We take our responsibilities as Trustees very seriously. It is our goal not to lose your original principle whether it is invested in securities, real estate or collectibles. Using the tools available to us we make every effort to achieve that goal while seeking optimum returns within your risk tolerance.



We meld commitment, people and methodology together to form our approach to meeting your individual needs and achieving your goals.

- | | |
|---|------------------------------|
| ➤ 1. Act In Your Best Interest | Show Details |
| ➤ 2. Follow a Fiduciary Duty Standard Of Care | Show Details |
| ➤ 3. Deliver Attentive, Personalized Service | Show Details |
| ➤ 4. Leverage our proven processes and consultative approach | Show Details |
| ➤ 5. Build Customized, Integrated Investment Plans | Show Details |
| ➤ 6. Achieve Goals And Experience Long-Term Success Through Strategic Advice | Show Details |
| ➤ 7. Offer A Team For Each Client | Show Details |
| ➤ 8. Manage Your Team Well | Show Details |
| ➤ 9. Focus On Professional Advice, Not On Products | Show Details |
| ➤ 10. Align Fee Structure with Your Best Interests | Show Details |
| ➤ 11. Practice Full Disclosure and Seek Transparent Costs | Show Details |
| ➤ 12. Utilize The Best People Irrespective Of The Source | Show Details |
| ➤ 13. Take Advantage of Research | Show Details |
| ➤ 14. Practice What We Preach | Show Details |
| ➤ 15. Produce Quantifiable Results | Show Details |

Investment Services are provided by Atherton Trust Company, a Private Trust Company, and are not available to the general public.

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[Return to top of page](#)

EXHIBIT 2



**ATHERTON
TRUST**

YOUR PRIVATE TRUST COMPANY

[Home](#) | [About Us](#) | [Resources](#) | [Contact Us](#)

✓ **Atherton Trust**

✓ **Your Needs**

Business Owner

Corporate Executive

New Wealth

Generational Wealth

Athlete

Elder Care

Life Changing Event

Your Goals

Our Approach

Our Solutions

Your Needs



Our focus is you.

Atherton Trust provides wealth management services to high net worth individuals who have widely varying backgrounds and needs.

Our focus is you

Atherton Trust is committed to helping you and your family build wealth, lead happy, healthy and fulfilling lives and care for aging parents or special needs children. We encourage a happy and fulfilling relationship between parents and their children and the creation of family money values. We fulfill your needs by understanding your current situation, your needs, your goals, your time horizons and your family dynamics. Our dedicated team of specialists creates an integrated lifestyle, family and professional plan that enables you and the members of your family to achieve your collective and individual goals while satisfying your personal needs.

Many parents do not want to be a burden to their children when they become older. Knowing you have the financial resources to remain independent is only part of solution, you also want the peace of mind that comes from having compassionate experienced care givers to meet your daily needs when the time comes. The comfort of knowing you will be well cared for, frees parents from the anxiety of burdening their children and grandchildren. In some cases, parents have acted as a referee between their children. Who will take your place to keep peace between your children? Another common question is how to keep your children from fighting over the estate or squandering it when you are gone? Yet another common question is who will manage your family business when you are no longer able to? Atherton Trust has the answers to these and many of your other questions.

Whether you are a business owner, corporate executive, a recipient of new wealth or generational wealth, an professional athlete, a person in need of Elder Care or a person who has experienced a life changing event, we have the experienced team of specialists who will help you with your needs and help you to achieve your goals.

To learn more about how we can work with you, please [contact us](#)

[About Us](#) | [Resources](#) | [Contact Us](#) | [Your Needs](#) | [Your Goals](#) | [Our Approach](#) | [Our Solutions](#)

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Web Design by Emily Melnick, Inc.

EXHIBIT 3



ATHERTON TRUST

YOUR PRIVATE TRUST COMPANY

[Home](#) | [About Us](#) | [Resources](#) | [Contact Us](#)

✓ Atherton Trust

[Your Needs](#)
[Your Goals](#)
[Our Approach](#)

✓ Our Solutions

[Wealth Planning](#)
[Trust & Guardian
Services](#)
[Elder Care](#)
[Investments](#)
[Insurance](#)
[Private Banking](#)
[Philanthropic Advisory](#)
[Family Wealth](#)
[Specialized Wealth
Solutions](#)
[Asset Management](#)

Our Solutions



The solutions you need. The service you want, when you want it.

Comprehensive tailored solutions

Your Relationship Manager coordinates your team of wealth management and lifestyle professionals, each a recognized specialist in Wealth Management, Asset Management, Trusts, Investments, Philanthropy, Elder Care, Insurance, Private Banking, and Family and Lifestyle Services. There are only a few advisors in each specialty who are recognized by their peers as being the very best at what they do; these are the advisors on your team. We meld a team of elite professionals, chosen just for you, based on your unique criteria, to meet your individual needs and goals. Your Wealth Management team works with your CPA, Attorney or any of your current professional advisors, to custom design the best solutions for you and your family. As your needs and goals change, your team adjusts and executes your plan to meet your current and future needs and goals.

Wealth Planning

Wealth Planning is the framework for us to provide your financial and personal resources

[Read more...](#)

Asset Management

Professional management to grow the value of your real estate, securities or collectibles

[Read more...](#)

Trust Solutions

Transition your wealth with the minimum of taxes

[Read more...](#)

Investments

Loss prevention strategies combined with sound investment choices

[Read more...](#)

Insurance

Life and Property & Casualty insurance solutions to meet your personal and business risk management and wealth transfer goals

[Read more...](#)

Philanthropic Advisory

We help you choose the best run charities whose mission aligns with your giving plans

[Read more...](#)

Private Banking

Access the best banking services from the most solvent banking sources

[Read more...](#)

[About Us](#) | [Resources](#) | [Contact Us](#) | [Your Needs](#) | [Your Goals](#) | [Our Approach](#) | [Our Solutions](#)

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Web Design by Only Websites, LLC

EXHIBIT 4



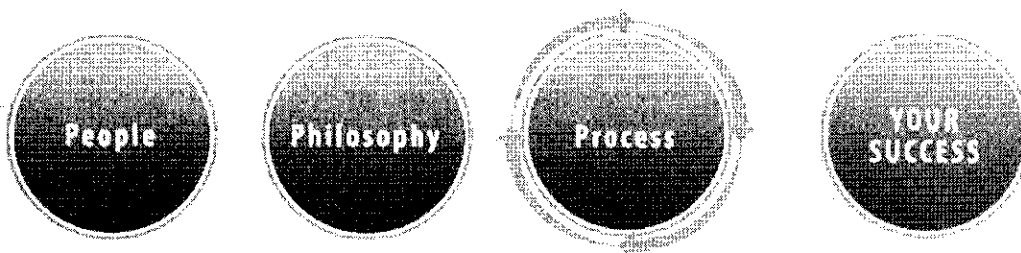
Our Approach

[Print this page](#)


A personal approach to serving you.

For more than 150 years, Wells Fargo has helped generations of families build, manage, preserve and transition their wealth.

Our approach to private wealth management focuses on bringing together the [people](#), [philosophy](#), and [process](#) to serve your unique financial needs and aspirations.



What we believe about successful wealth management

At Wells Fargo, we are focused on helping our clients succeed, and work continuously to improve our approach. Our long tradition of service suggests to us that there are three keys to providing successful wealth management: people, philosophy and process.

We see that the service that we offer can be no better than the quality of the [people](#) serving our clients, and that is why we place a great deal of emphasis on hiring the right people, training them appropriately, and encouraging them to grow professionally.

We have found that for us the right [philosophy](#) is centered on client focus, an extensive investment platform and continued innovation.

And finally, we have found that effective wealth management requires diligent execution of a disciplined [process](#) focused on helping each client succeed, and evolving that plan to meet changing life circumstances.

Learn more about how Wells Fargo Private Bank can enrich your life with private wealth management [solutions](#) custom-designed to address your deepest needs and aspirations.

Our commitment to you

Wells Fargo is proud of our tradition of private wealth management. At The Private Bank, we are focused on helping you succeed, and commit that we will:

1. **Develop and implement a comprehensive wealth plan** tailored to your needs.
2. **Leverage our disciplined, consultative goals-based [wealth planning process](#)** to address the wealth management issues that you are likely to face in your financial life.
3. **Utilize the vast resources of Wells Fargo** to develop integrated wealth management [solutions](#) tailored to meet your particular needs.
4. **Deliver exceptional, personalized service** through your dedicated relationship manager, and The Private Bank service team available 24/7.

Wells Fargo Private Bank provides products and services through Wells Fargo Bank, N.A. and its various affiliates and subsidiaries.

Wells Fargo Bank, N.A. Member FDIC

Investment and Insurance Products: • Not FDIC Insured • No Bank Guarantee • May Lose Value

EXHIBIT 5



THE PRIVATE BANK

Username:

Password:

[Contact Us](#) | [Family Wealth](#) | [wellsfargo.com](#)

▼ The Private Bank

[Your Goals](#)

► Your Profile

[Our Solutions](#)
[Our Approach](#)

Your Profile

[Print this page](#)


A focus on understanding you.

Wells Fargo Private Bank provides wealth management services to high net worth individuals who have widely varying backgrounds and needs.

Our focus is on you

Your dedicated relationship manager is focused on understanding you and your family – including your current situation, your goals, your time horizons and your family dynamics.

Based on this foundational understanding, your relationship manager will bring together a dedicated team of specialists who will work together to create an integrated, customized wealth plan to help you achieve your goals. We tailor your wealth plan and bring together [wealth planning](#), [savings](#), [banking](#), [investments](#), [trust solutions](#), [specialized wealth solutions](#) and [insurance](#) for your unique needs.

We hope the illustrative profiles referenced below give you an idea of how we work with a few different types of clients, so that you can begin to understand the care we would take in developing a customized wealth strategy for you.

[Business Owner](#)
[Corporate Executive](#)
[New Wealth](#)
[Generational Wealth](#)
[Professional Advisor](#)

To learn more about how we can work with you, please [contact us](#).

Wells Fargo Private Bank provides products and services through Wells Fargo Bank, N.A. and its various affiliates and subsidiaries.

Brokerage products and services are offered through Wells Fargo Advisors. Wells Fargo Advisors is the trade name used by two separate registered broker-dealers: Wells Fargo Advisors, LLC and Wells Fargo Advisors Financial Network, LLC, (Members [SIPC](#)), non-bank affiliates of Wells Fargo & Company.

Insurance products are offered through our affiliated non-bank insurance agencies (California license #26-0070024).

Equal Housing Lender

Investment and Insurance Products:

- Are Not insured by the FDIC or any other federal government agency
- Are Not deposits of or guaranteed by a Bank or any Bank Affiliate
- May Lose Value

[Your Goals](#) | [Your Profile](#) | [Our Solutions](#) | [Our Approach](#)
[About Wells Fargo](#) | [Careers](#) | [Privacy](#) | [Security & Legal](#) | [Report Email Fraud](#)

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EXHIBIT 6



THE PRIVATE BANK

Username:

Password:

[Sign On](#)
[Contact Us](#) | [Family Wealth](#) | [wellsfargo.com](#)
[The Private Bank](#)
[Your Goals](#)
[Your Profile](#)
[Our Solutions](#)
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Our Solutions

[Back](#) | [Print this page](#)


The solutions and service you need.

For more than 150 years, Wells Fargo has provided innovative wealth management solutions with a focus on client service.

A wide range of wealth management solutions

As a client of The Private Bank, you work with a relationship manager who in turn coordinates a [wealth management team](#) comprised of dedicated professionals, each a specialist in a different area of wealth management.

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- [Wealth planning](#) is core to our ability to understand your unique needs and align the appropriate wealth management solutions to meet them.
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- [Investments](#) organized within an asset allocation plan custom designed for your specific circumstances.
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- [Specialized wealth solutions](#) for complex wealth and asset management needs, including [business advisory services](#), [philanthropic services](#), [elder services](#) and [special needs trust](#), among others.
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Insights and Research

Wealth Management Update: Tax Relief Act of 2010: Impact on the 12 Wealth Management Issues (PDF)*

How The Act may specifically impact the 12 wealth management issues you may commonly face in your financial life.

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EXHIBIT 5

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F: (646) 308-1178



Counsel for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ERICKSON PRODUCTIONS, INC., and JIM
ERICKSON,

Plaintiffs,

v.

ATHERTON TRUST; KRAIG R. KAST; and ONLY
WEBSITES, INC.

Defendants.

No. 12-CV-1693-PGG

Hon. Paul G. Gardephe

**PLAINTIFFS'
FIRST AMENDED COMPLAINT**

Plaintiffs ERICKSON PRODUCTIONS, INC. and JIM ERICKSON, by and through undersigned counsel, pursuant to the applicable Federal Rules of Civil Procedure and the Local Rules of this Court, demand a trial by jury of all claims and issues so triable, and for their Complaint against Defendants Atherton Trust, Kraig Kast, and Only Websites, Inc. hereby assert and allege as follows:

JURISDICTION AND VENUE

1. Plaintiff Erickson Productions, Inc. ("Erickson Productions") is the sole distributor and licensor of photographic images taken by Plaintiff Jim Erickson ("Erickson") (collectively "Plaintiffs").

2. Erickson owns the copyrights to the images at issue in this action.
3. Erickson Productions, Inc.'s primary place of business is Petaluma, California.
4. Upon information and belief, Defendant Atherton Trust ("Atherton") is a real estate wealth management company.
5. Upon information and belief, Defendant Kraig R. Kast ("Kast") is the Chief Executive Officer and Managing Trustee of Atherton Trust.
6. Upon information and belief, Atherton is a Delaware registered corporation with its primary place of business in San Mateo, California with additional branch offices throughout the United States.
7. Upon information and belief, Defendant Only Websites, Inc. is a website development company with its primary place of business in American Fork or Salt Lake City, UT, with offices in Atlanta, GA and Honolulu, HI.
8. This is an action for copyright infringement and related claims brought by Plaintiffs against Defendants for unauthorized use of Erickson's copyrighted photographs.
9. Jurisdiction for Plaintiffs' claims lies with the United States District Court for the Southern District of New York pursuant to the Copyright Act of 1976, 17 U.S.C. §§101, *et seq.*, 28 U.S.C. § 1331 (conferring original jurisdiction "of all civil actions arising under the Constitution, laws, or treaties of the United States"), and 28 U.S.C. § 1338(a) (conferring original jurisdiction over claims arising under any act of Congress relating to copyrights).
10. Venue is proper in this Court under 28 U.S.C. §§1391(b) since a substantial portion of the alleged misconduct by the Defendants giving rise to the claims asserted herein occurred in this District and 28 U.S.C. § 1400(a) since Defendants may be found in this District.
11. Upon information and belief, evidence adduced during discovery will show that

Defendants have significant contacts, both general and specifically related to the events at issue in this action, with the forum jurisdiction, including operating a website that is fully interactive and thus can be and has been accessed by persons in this district; and Defendants infringed Plaintiffs' copyrights in this jurisdiction.

GENERAL ALLEGATIONS

12. Plaintiff Erickson Productions is a distributor and licensor of stock photography images taken by Jim Erickson.

13. Mr. Erickson is a professional photographer who makes his living by taking and licensing photographs.

14. Defendant Atherton owns and operates a website with the following URL address: www.athertontrust.com.

15. Upon information and belief, Defendant Atherton exploited Mr. Erickson's copyrighted photographs for commercial use on this website without permission.

16. Because Defendant Atherton has refused to cooperate or disclose information relating to its infringing use of Plaintiff's work, the full scope of Defendant's infringing activities in this regard has not yet been ascertained.

17. Upon information and belief, Defendant used at least three (3) of Plaintiff's copyrighted photographs on its website without permission.

18. Upon information and belief, Atherton engaged Defendant Only Websites, Inc. to create and publish the infringing website.

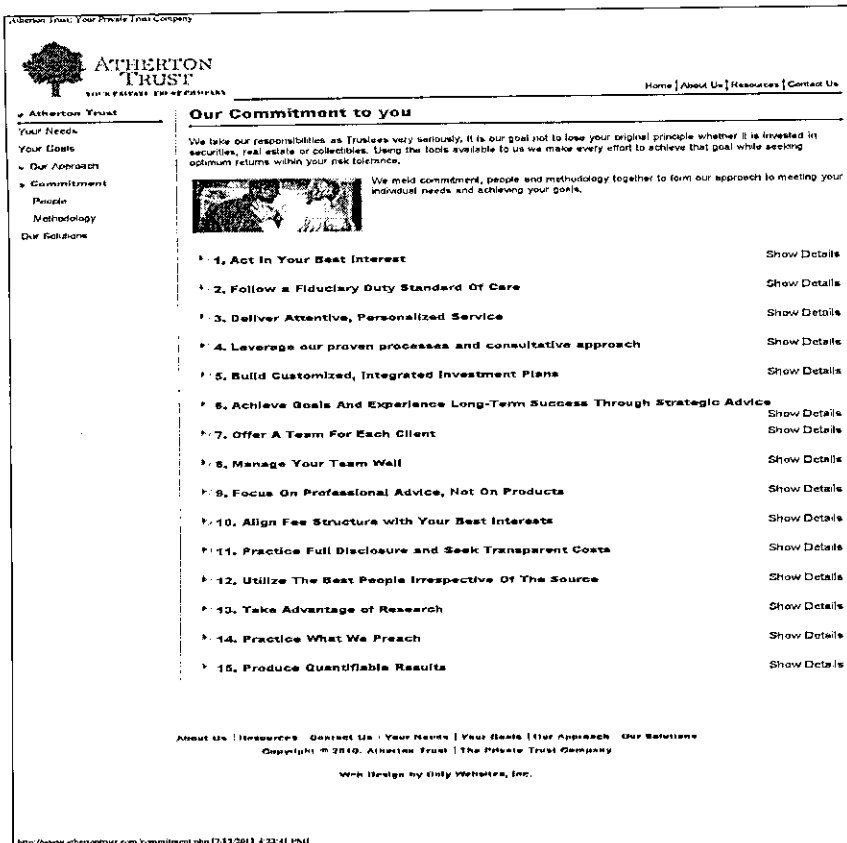
19. Upon information and belief, Only Websites, Inc. copied Plaintiffs' photographs without permission on the website it created for Atherton and then published Plaintiffs' photographs without permission.

20. Upon information and belief, Defendant Kraig Kast is the person primarily responsible for the content of Atherton's website and/or exercises control over such content and enjoys benefits and derives profits from the operation of the website.

21. The following is a true and correct copy of Mr. Erickson's photograph identified or referred to as "07004-278"



22. The following is a true and correct copy of a screen capture of the "Our Commitment" page (<http://www.athertontrust.com/commitment.php>) of Atherton's website (See Exhibit 1):

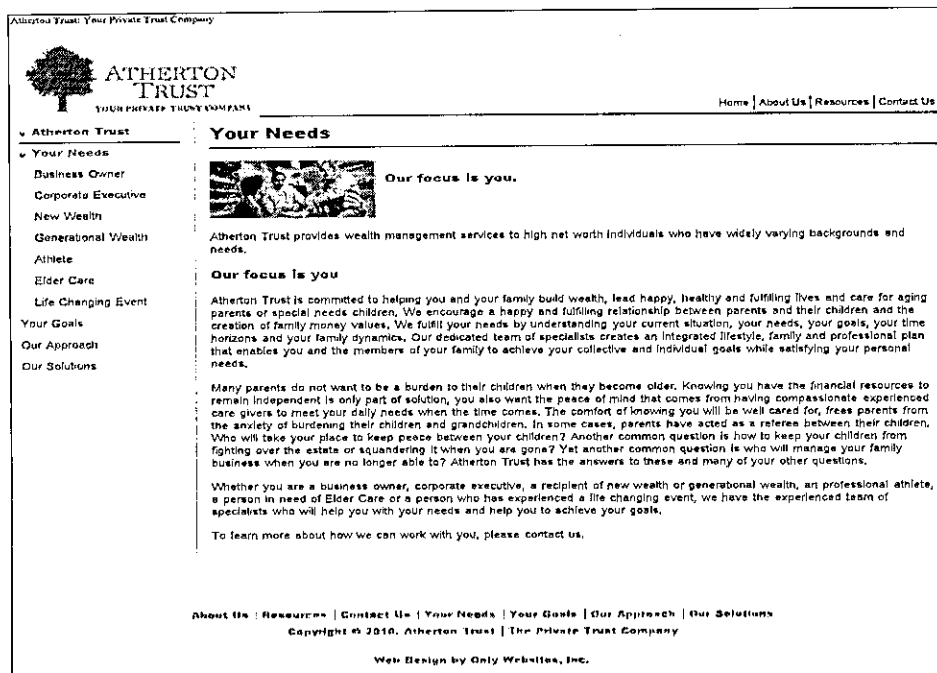


23. The following is a true and correct copy of Mr. Erickson's photograph identified or referred to as "01018-03":



24. The following is a true and correct copy of a screen capture of the "Your Needs"

page (<http://www.athertontrust.com/your-needs.php>) of Defendant Atherton's website (See Exhibit 2):

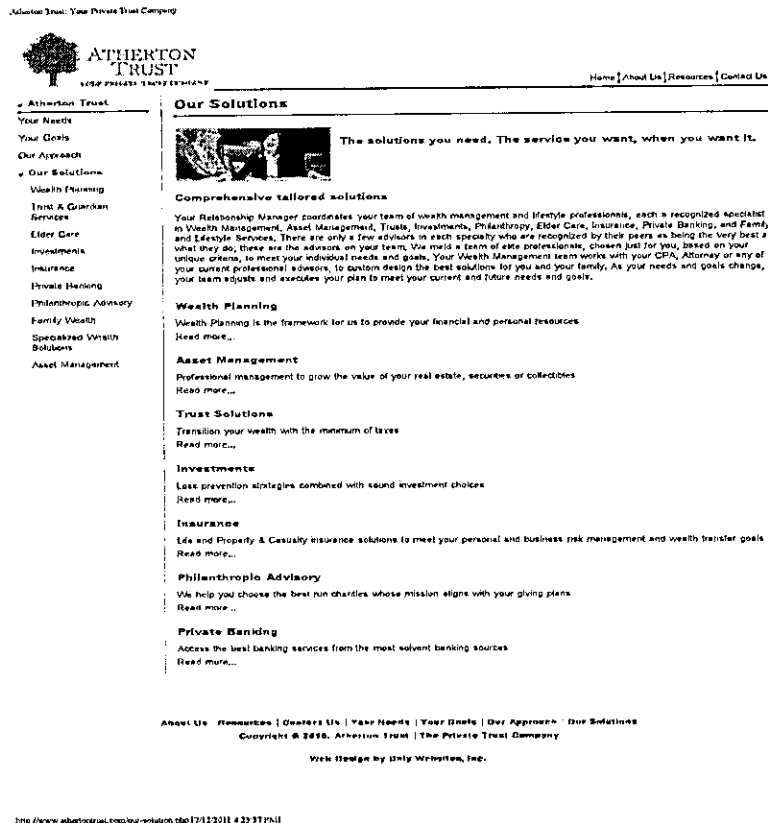


25. The following is a true and correct copy of Plaintiff's photograph identified or referred to as "07006-3520":



26. The following is a true and correct copy of a screen capture of the "Our Solutions" page (<http://www.athertontrust.com/our-solution.php>) of Defendant Atherton's

website (See Exhibit 3):



27. Defendant Atherton used, published, distributed, and otherwise exploited Plaintiff's photographs on its website without obtaining prior permission from Plaintiff and without acquiring a license to do so.

28. Upon information and belief, Atherton copied these images (along with significant other content) from the webpage of Wells Fargo, one of Erickson's clients who obtained a legitimate license to use these images on its website.

29. Upon information and belief, the use of the Erickson image on the "Our Commitment" page of the Atherton website was copied from the "Our Approach" page of the

Wells Fargo site. Compare Exhibit 1 (<http://www.athertontrust.com/commitment.php>) to Exhibit 4 (<https://www.wellsfargo.com/theprivatebank/ourapproach/>).

30. Upon information and belief, the use of the Erickson image on the “Your Needs” page of the Atherton website was copied from the “Your Profile” page of the Wells Fargo site. Compare Exhibit 2 (<http://www.athertontrust.com/your-needs.php>) to Exhibit 5 (<https://www.wellsfargo.com/theprivatebank/yourprofile/>).

31. Upon information and belief, the use of the Erickson image on the “Our Solutions” page of the Atherton website was copied from the “Our Solutions” page of the Wells Fargo site. Compare Exhibit 3 (<http://www.athertontrust.com/our-solution.php>) to Exhibit 6 (<https://www.wellsfargo.com/theprivatebank/oursolutions/>).

32. On July 12, 2011, Plaintiff requested that Defendant Atherton cease usage of the copyrighted images presented herein, and disclose information regarding its infringing use of Plaintiff’s copyrighted works.

33. Defendant Kast responded by claiming that a third-party web developed had included the images on Atherton’s website. When pressed for more information about the identity of the web developer, Defendant Kast initially refused to provide additional information.

34. Defendant Kast’s response to the takedown demand evinces that he exercised control over the content of the Atherton website and was responsible for overseeing its content.

35. Plaintiff registered the photographs used by Defendant with the United States Copyright Office.

36. Image 01018-03 is registered under Copyright Registration VA 1-734-754.

37. Image 07004-278 is registered under Copyright Registration VA 1-745-747.

38. Image 07006-3520 is registered under Copyright Registration VA 1-632-501.

39. Upon information and belief, Erickson registered his copyrights in these images prior to Defendant Atherton's infringement.

40. Because Defendants have refused to cooperate or disclose information relating to its infringing use of Plaintiff's work, the full scope of Defendants' infringing activities has not yet been ascertained.

**COUNT I
(COPYRIGHT INFRINGEMENT)**

41. Plaintiffs repeat and reallege each allegation set forth above as if set forth fully herein.

42. Erickson is the registered copyright owner of the creative works identified herein and that are the subject of this action. Erickson Productions is the sole distributor and licensor of this content.

43. Defendants used, published, displayed, distributed, and/or exploited Plaintiffs' creative works without prior license or permission or authorization to do so.

44. Defendants did not secure permission, authorization, or a license to use and display Plaintiffs' creative works in the publications and materials identified herein prior to publication.

45. Upon information and belief, Defendant Kraig Kast is the person primarily responsible for the content of Atherton's website and/or exercises control over such content and enjoys benefits and derives profits from the operation of the website.

46. Upon information and belief, Defendant Kast engaged Defendant Only Websites, Inc. to develop and create the infringing website.

47. Defendants' use of Plaintiff's creative work did not accord any attribution or credit or ownership of this work to Plaintiff.

48. Defendant Atherton's failure and/or refusal to disclose information regarding its infringing conduct through Defendant Kast was willful, knowing and intentional.

49. By using, displaying, distributing, exploiting, publishing, and otherwise exploiting Erickson's copyrighted creative works, Defendants infringed Erickson's copyrights in the creative works identified herein.

50. Defendants' infringements caused Plaintiffs significant injuries, damages, and losses in amounts to be determined at trial.

51. Upon information and belief, Defendants' unauthorized use was willful.

52. Plaintiffs seek all damages recoverable under the Copyright Act, including statutory or actual damages, including Defendants' profits attributable to the infringements, and damages suffered as a result of the lack of compensation, credit, and attribution and from any diminution in the value of Plaintiffs' copyrighted works. Plaintiffs also seek all attorneys' fees and any other costs incurred in pursuing and litigating this matter.

WHEREFORE, Plaintiffs respectfully prays for judgment on his behalf and for the following relief:

1. A preliminary and permanent injunction against Defendants from copying, displaying, distributing, advertising, promoting, and/or selling the infringing publications identified herein, and requiring Defendants to deliver to the Court for destruction or other appropriate disposition all relevant materials, including digital files of Plaintiffs' photographs and all copies of the infringing materials described in this complaint that are in the control or possession or custody of Defendants;

2. All allowable damages under the Copyright Act, including, but not limited to, statutory or actual damages, including damages incurred as a result of Plaintiffs' loss of licensing

revenue and Defendants' profits attributable to infringement, and damages suffered as a result of the lack of credit and attribution;

3. All allowable damages caused by and/or resulting from Defendants' violation and infringement of Plaintiff's moral rights in and to this creative visual work;

4. Plaintiffs' full costs, including litigation expenses, expert witness fees, interest, and any other amounts authorized under law, and attorneys' fees incurred in pursuing and litigating this matter;

5. Any other relief authorized by law, including punitive and/or exemplary damages; and

6. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED


Dated June 1, 2012

New York, New York.

Respectfully submitted,

NELSON & McCULLOCH LLP

By:



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New York, New York 10174
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Attorneys for Plaintiffs

EXHIBIT 1

- » Atherton Trust

Your Needs

Your Goals

» Our Approach

» Commitment

People

Methodology

Our Solutions

Our Commitment to you

We take our responsibilities as Trustees very seriously. It is our goal not to lose your original principle whether it is invested in securities, real estate or collectibles. Using the tools available to us we make every effort to achieve that goal while seeking optimum returns within your risk tolerance.



We meld [commitment](#), [people](#) and [methodology](#) together to form our approach to meeting your individual needs and achieving your goals.

- ▶ 1. Act In Your Best Interest

Show Details

▶ 2. Follow a Fiduciary Duty Standard Of Care

Show Details

▶ 3. Deliver Attentive, Personalized Service

Show Details

▶ 4. Leverage our proven processes and consultative approach

Show Details

▶ 5. Build Customized, Integrated Investment Plans

Show Details

▶ 6. Achieve Goals And Experience Long-Term Success Through Strategic Advice

Show Details

▶ 7. Offer A Team For Each Client

Show Details

▶ 8. Manage Your Team Well

Show Details

▶ 9. Focus On Professional Advice, Not On Products

Show Details

▶ 10. Align Fee Structure with Your Best Interests

Show Details

▶ 11. Practice Full Disclosure and Seek Transparent Costs

Show Details

▶ 12. Utilize The Best People Irrespective Of The Source

Show Details

▶ 13. Take Advantage of Research

Show Details

▶ 14. Practice What We Preach

Show Details

▶ 15. Produce Quantifiable Results

Show Details

EXHIBIT 2

» Atherton Trust
» Your Needs
» Business Owner
» Corporate Executive
» New Wealth
» Generational Wealth
» Athlete
» Elder Care
» Life Changing Event
» Your Goals
» Our Approach
» Our Solutions

Your Needs



Our focus is you.

Atherton Trust provides wealth management services to high net worth individuals who have widely varying backgrounds and needs.

Our focus is you

Atherton Trust is committed to helping you and your family build wealth, lead happy, healthy and fulfilling lives and care for aging parents or special needs children. We encourage a happy and fulfilling relationship between parents and their children and the creation of family money values. We fulfill your needs by understanding your current situation, your needs, your goals, your time horizons and your family dynamics. Our dedicated team of specialists creates an integrated lifestyle, family and professional plan that enables you and the members of your family to achieve your collective and individual goals while satisfying your personal needs.

Many parents do not want to be a burden to their children when they become older. Knowing you have the financial resources to remain independent is only part of solution, you also want the peace of mind that comes from having compassionate experienced care givers to meet your daily needs when the time comes. The comfort of knowing you will be well cared for, frees parents from the anxiety of burdening their children and grandchildren. In some cases, parents have acted as a referee between their children. Who will take your place to keep peace between your children? Another common question is how to keep your children from fighting over the estate or squandering it when you are gone? Yet another common question is who will manage your family business when you are no longer able to? Atherton Trust has the answers to these and many of your other questions.

Whether you are a business owner, corporate executive, a recipient of new wealth or generational wealth, an professional athlete, a person in need of Elder Care or a person who has experienced a life changing event, we have the experienced team of specialists who will help you with your needs and help you to achieve your goals.

To learn more about how we can work with you, please [contact us](#).

EXHIBIT 3

» Atherton Trust
Your Needs
Your Goals
Our Approach
» Our Solutions
Wealth Planning
Trust & Guardian Services
Elder Care
Investments
Insurance
Private Banking
Philanthropic Advisory
Family Wealth
Specialized Wealth Solutions
Asset Management

Our Solutions



The solutions you need. The service you want, when you want it.

Comprehensive tailored solutions

Your Relationship Manager coordinates your team of wealth management and lifestyle professionals, each a recognized specialist in Wealth Management, Asset Management, Trusts, Investments, Philanthropy, Elder Care, Insurance, Private Banking, and Family and Lifestyle Services. There are only a few advisors in each specialty who are recognized by their peers as being the very best at what they do; these are the advisors on your team. We meld a team of elite professionals, chosen just for you, based on your unique criteria, to meet your individual needs and goals. Your Wealth Management team works with your CPA, Attorney or any of your current professional advisors, to custom design the best solutions for you and your family. As your needs and goals change, your team adjusts and executes your plan to meet your current and future needs and goals.

Wealth Planning

Wealth Planning is the framework for us to provide your financial and personal resources

[Read more...](#)

Asset Management

Professional management to grow the value of your real estate, securities or collectibles

[Read more...](#)

Trust Solutions

Transition your wealth with the minimum of taxes

[Read more...](#)

Investments

Loss prevention strategies combined with sound investment choices

[Read more...](#)

Insurance

Life and Property & Casualty insurance solutions to meet your personal and business risk management and wealth transfer goals

[Read more...](#)

Philanthropic Advisory

We help you choose the best run charities whose mission aligns with your giving plans

[Read more...](#)

Private Banking

Access the best banking services from the most solvent banking sources

[Read more...](#)

EXHIBIT 4

▼ The Private Bank

[Your Goals](#)

[Your Profile](#)

[Our Solutions](#)

► Our Approach

Our Approach

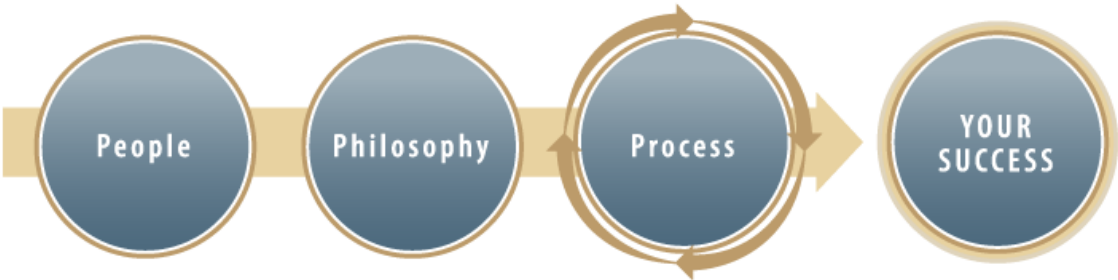
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A personal approach to serving you.

For more than 150 years, Wells Fargo has helped generations of families build, manage, preserve and transition their wealth.

Our approach to private wealth management focuses on bringing together the [people](#), [philosophy](#) and [process](#) to serve your unique financial needs and aspirations.



What we believe about successful wealth management

At Wells Fargo, we are focused on helping our clients succeed, and work continuously to improve our approach. Our long tradition of service suggests to us that there are three keys to providing successful wealth management: people, philosophy and process.

We see that the service that we offer can be no better than the quality of the [people](#) serving our clients, and that is why we place a great deal of emphasis on hiring the right people, training them appropriately, and encouraging them to grow professionally.

We have found that for us the right [philosophy](#) is centered on client focus, an extensive investment platform and continued innovation.

And finally, we have found that effective wealth management requires diligent execution of a disciplined [process](#) focused on helping each client succeed, and evolving that plan to meet changing life circumstances.

Learn more about how Wells Fargo Private Bank can enrich your life with private wealth management [solutions](#) custom-designed to address your deepest needs and aspirations.

Our commitment to you

Wells Fargo is proud of our tradition of private wealth management. At The Private Bank, we are focused on helping you succeed, and commit that we will:

1. **Develop and implement a comprehensive wealth plan** tailored to your needs.
2. **Leverage our disciplined, consultative goals-based [wealth planning process](#)** to address the wealth management issues that you are likely to face in your financial life.
3. **Utilize the vast resources of Wells Fargo** to develop integrated wealth management [solutions](#) tailored to meet your particular needs.
4. **Deliver exceptional, personalized service** through your dedicated relationship manager, and The Private Bank service team available 24/7.

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Wells Fargo Bank, N.A. Member FDIC

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EXHIBIT 5

Your Profile

 [Print this page](#)



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Based on this foundational understanding, your relationship manager will bring together a dedicated team of specialists who will work together to create an integrated, customized wealth plan to help you achieve your goals. We tailor your wealth plan and bring together [wealth planning](#), [private banking](#), [investments](#), [trust solutions](#), [specialized wealth solutions](#) and [insurance](#) for your unique needs.

We hope the illustrative profiles referenced below give you an idea of how we work with a few different types of clients, so that you can begin to understand the care we would take in developing a customized wealth strategy for you.

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Related Information

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Our Solutions

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- [Investments](#) organized within an asset allocation plan custom designed for your specific circumstances.
- [Trust solutions](#) – Wells Fargo can help you set up a [personal trust](#), serve as your [corporate trustee](#), and administer your trust with a wide range of [trustee services](#), all tailored to your unique circumstances.
- [Specialized wealth solutions](#) for complex wealth and asset management needs, including [business advisory services](#), [philanthropic services](#), [elder services](#) and [special needs trust](#), among others.
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EXHIBIT 6

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ERICKSON PRODUCTIONS, INC., and JIM
ERICKSON,

Plaintiff,

v.

ATHERTON TRUST; KRAIG R. KAST; and
ONLY WEBSITES, INC.

Defendants.

No. 12-CV-1693-PGG

**[PROPOSED]
ORDER TO SHOW CAUSE**

Upon the declaration of Danial A. Nelson, counsel for Plaintiff, sworn to the 24th day of September, 2012, and upon the Certificate of Default entered by the Clerk of this Court on the 24th day of September, 2012, and hereto annexed, it is hereby

ORDERED, that Defendants ATHERTON TRUST; ONLY WEBSITES, INC. show cause before a motion term of this Court, at Room _____, United States Courthouse, 500 Pearl Street, in the City, County and State of New York, on _____, _____, at _____ o'clock in the _____noon thereof, or as soon thereafter as the parties or their counsel may be heard, why an order of default judgment should not be issued against Defendants ATHERTON TRUST; ONLY WEBSITES, INC. pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure and Local Civil Rule 55.2(b); and it is further ordered that

So ordered this _____ day of _____, 2012.

New York, New York

Hon. John G. Koeltl
United States District Judge